

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CRISTINA BENEDETTO, et al.,

Plaintiffs,

-against-

JANE KORINEK,

Defendant.

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**MEMORANDUM AND ORDER**

Case No. 1:21-cv-06005-FB-RLM

*Appearances:*

*For the Plaintiffs:*

JOSHUA CLINTON PRICE  
The Price Law Firm LLC  
1115 Broadway  
Ste. 1053  
New York, NY 10010

*For the Defendant:*

DOUGLAS ANDREW SHEARER  
Shearer P.C.  
98 Forest Avenue  
Locust Valley, NY 11560

**BLOCK, Senior District Judge:**

Cristina and Evan Benedetto (the “Benedettos”), in their individual capacities and on behalf of their young son, brought this action against Jane Korinek (“Korinek”) for injuries suffered due to mold and other issues with the apartment where they resided, which Korinek owns. On November 5, 2021, Magistrate Judge Roanne L. Mann issued a Report and Recommendation (“R&R”), recommending that this action be *sua sponte* remanded to Supreme

Court, Kings County, for lack of subject matter jurisdiction. *See* ECF No. 4 at 3. A court may do so under 28 U.S.C. § 1447(c).

Defendant timely objected to the R&R's finding that the Notice of Removal provides an insufficient basis for concluding that the amount in controversy satisfies the jurisdictional threshold required for diversity jurisdiction. This objection triggers the Court's *de novo* review. *See* 28 U.S.C. § 636(b)(1). For the following reasons, the Court overrules the objection and adopts Magistrate Judge Mann's R&R in full.

Defendant Korinek removed this action from state court on October 28, 2021 based on diversity jurisdiction. *See* ECF 1. To satisfy the requirements for diversity jurisdiction in this case, Korinek must show that (i) the Benedettos are citizens of a state and Korinek is a subject of a foreign government and (ii) the amount in controversy exceeds \$75,000. *See* 28 U.S.C. § 1332; *see also Mehlenbacher v. Akzo Nobel Salt, Inc.*, 216 F. 3d 291, 296 (2d. Cir. 2000). The Benedettos pleaded that they are citizens of New York and Korinek alleges that she is a citizen of France, where she was served.

However, the Notice of Removal does not provide a basis for finding that the amount in controversy exceeds \$75,000. It merely acknowledges that the plaintiffs seek to recover for an unspecified amount in damages. *See* ECF 1 at 2.

The Complaint likewise does not specify the numerical amount in damages sought, beyond reimbursement of the Benedettos' security deposit in the amount of \$3,650. *See* ECF 1 at 15. Korinek objects, arguing that there is a basis for finding that the amount in controversy exceeds \$75,000 because the Benedettos submitted a written claim form to Korinek and her insurer prior to filing this action which provided support for recovery of \$71,899.75, with regard to claims one, two and four. With this action, the Benedettos also seek recovery for personal injury via count three. This amount would need to exceed \$3,100.25 in order to satisfy the diversity jurisdiction requirement, and Korinek argues that it is reasonable to assume that it would. However, the Court disagrees that this is a reasonable inference, since no support is provided for it. Even if the Court accepts the support that Korinek submitted with her objection to the R&R that the claim will reach \$71,899.75, this amount does not exceed \$75,000.

After review, the Court agrees with the reasoning and conclusion elaborated by Magistrate Judge Mann in the R&R and accordingly adopts the same. There is no showing that the amount in controversy exceeds \$75,000, which prevents a finding of diversity subject matter jurisdiction. Accordingly, the action is *sua sponte* remanded to state court.

### **CONCLUSION**

The Defendant's objection to the Magistrate Judge's Report and Recommendation is **OVERRULED**, and the Report and Recommendation is **ADOPTED** in full.

**SO ORDERED.**

/S/ Frederic Block  
FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
January 4, 2022